

Amendment and Response [Under 37 C.F.R. § 1.116 - Expedited Examining Procedure]

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Serial No.: 10/790,355

Confirmation No.: 9409

Filed: 1 March 2004

For: WALK-BEHIND IMPLEMENT AND HANDLE ASSEMBLY RELEASE APPARATUS FOR
USE WITH SAME

Remarks

The Office Action of 22 March 2006 has been received and reviewed. With claims 10, 15, 16, 19, 20, 23, and 24 having been amended, claims 4-6 and 18 having been canceled, and claims 27-30 having been added, the pending claims are claims 1, 3, 7-12, 15, 16, and 19-30. Reconsideration and withdrawal of the rejections are respectfully requested for at least the reasons set forth below.

Information Disclosure Statement

Applicant's representative, Matthew W. Adams (Reg. No. 43,459), appreciates Examiner A. Torres' time in discussing this matter on 29 March 2006. As discussed, Applicant has previously submitted (on 16 December 2004) a PTO-1449 form that identified U.S. Pat. App. No. 10/942,427. However, this document was crossed-out in the initialed copy of the PTO-1449 form returned with the first Office Action of 20 September 2005. Pursuant to the Examiner's instructions, a copy of the PTO-1449 form was included with the Response of 20 December 2005. Unfortunately, the final Office Action of 22 March 2006 did not address this matter. As discussed during the teleconference on 29 March 2006, it is requested that a copy of the PTO-1449 form identifying this document be initialed and returned with the next Official Communication.

Claim Objections

Claims 15 and 16 were objected to due to informalities. These claims have been amended as shown above to address any alleged lack of clarity regarding the usage of the term "transverse."

Claim Amendments

Claims 10, 23, and 24 have been amended to address minor cosmetic errors. For example, the claims have been amended to better correspond with the remainder of the claim by

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explicitly reciting that "the handle assembly" is unlocked from the first operating position.

Further, for example, some commas have been removed to improve readability and consistency.

Claims 15 and 16 have been amended as described above. The amendments to these claims are intended only to explicitly state what was already implicit in the claims.

Claims 19 and 20 have been amended to revise their dependencies in view of new claim 30.

These amendments are not intended to narrow the scope of the respective claims.

It is respectfully requested that these amendments be entered and considered as they include only minor or insubstantial changes. Moreover, these amendments do not present new problems or issues of fact.

The 35 U.S.C. §103 Rejection

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

M.P.E.P. § 2143.

Claims 1, 3, 7-12, 15, 16, 19-21, and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Keesee (U.S. Patent No. 3,702,016) in view of Chou (U.S. Patent No. 5,447,217). Applicant traverses this rejection for at least the following reasons.

Keesee discloses a handle unit for a lawn mower. However, as the Office Action identifies, Keesee fails to teach or suggest: a release member operable to both pivot about an axis transverse to a longitudinal axis of the unit, and impart a releasing force simultaneously to each of the first and second handle members (as recited in claim 1); a lever pivotable about an axis transverse to a longitudinal axis of the mower and operable to impart a releasing force to the at least one handle member to unlock the handle assembly from the first operating position (claim

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10); a lever member operable to simultaneously apply a separating force between the first handle member and the first handle retention portion, and between the second handle member and the second handle retention portion, and further wherein the lever member pivots about an axis that is generally horizontal and transverse to a longitudinal axis of the lawn mower (claim 15); a lever pivotable about an axis transverse to a longitudinal axis of the mower and operable to impart a releasing force to the at least one handle member to unlock the handle assembly from the first operating position, the releasing force comprising a force that displaces the at least one handle member in a direction transverse to the longitudinal axis of the mower (claim 24). Keesee further fails to teach a release apparatus operable to impart a releasing force directly to each of the first handle member and the second handle member to unlock the handle assembly from the first operating position (claim 26).

However, the Office Action indicates that any deficiencies in Keesee are addressed in the disclosure of Chou. Chou describes an adjustable towing handle for a trunk. The handle includes a control tube 12, adjustable rod 20, fixed rod 30 and a fixed rod seat 40. The control tube 12 is a short tube body having an inner polygonal configuration, and an intermediate body 17. Each side of the control tube has a pin 14 inserted therein. An end of the pin 14 that is inserted into the tube has a flat configuration while an opposite end has an arcuate head 15 as shown in Figures 4 and 5. The adjustable rod 20 includes a plurality of location holes 21. Each pin 14 has a spring 13 thereon located within the control tube 12 which is mounted such that the body 17 projects through a slot hole 19 (see, e.g., Col. 2, Lines 12-32).

Referring to FIG. 4, when a location hole 21 of adjustable rod 20 is aligned with a location hole 31 of fixed rod 30, the pin 14 will penetrate it to extend into holes 21 and 31 with pin head 15. Because of such engagement[,] the adjustable rod 20 will be fixed in position. For extending or retracting, the body 17 is turned to enable the curved faces of pin heads 15 to contact location holes 21 and 31, changing into a curve face from a flat face [see Figure 5]. Pulling or pushing the handle 13 enables adjustable rod 20 to easily be released from the fixed position by curved face of pin head 15. When pulled up to the position desired, the body

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17 is rotated back to its original position to enable pin head 15 to contact adjustable rod 20 with a flat face.

Chou, Col. 2, Lines 48-61, emphasis added.

Thus, from a careful examination of Chou, the document fails to teach or even suggest a release member or lever capable of imparting a releasing force to one or both of its adjustable rods 20. In fact, the mechanism of Chou does not impart any releasing force at all to the rods 20. Rather, it merely rotates the pin such that the curved faces of the pins contact the holes 21, 31 rather than the flat faces. Any alleged "releasing force" to permit movement of the rods 20 must be imparted by the operator directly via the handle 13, not by any part of the mechanism (see underlined text quoted above).

As a result, it is submitted that Chou fails to teach or suggest the elements missing from Keesee. That is, it fails to teach or suggest a release member that imparts a releasing force simultaneously to each of the first and second handle members (e.g., as recited in claim 1). Nor does it teach or suggest a lever operable to impart a releasing force to the at least one handle member to unlock the handle assembly from the first operating position (as recited in claim 10). Chou also fails to teach or suggest a lever member operable to simultaneously apply a separating force between the first handle member and the first handle retention portion, and between the second handle member and the second handle retention portion (as recited by claim 15). It also fails to teach or suggest: a lever operable to impart a releasing force to the at least one handle member, wherein the releasing force includes a force that displaces the at least one handle member in a direction transverse to the longitudinal axis of the mower (as recited in claim 24); and a release apparatus operable to impart a releasing force directly to each of the first handle member and the second handle member to unlock the handle assembly from the first operating position (claim 26).

Applicant further asserts that, even if Chou could reasonably be interpreted to teach or suggest the releasing/separating force as claimed by Applicant, the Office Action has provided no suggestion or motivation to combine the teachings of Keesee with those of Chou as required

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to establish *prima facie* obviousness. For instance, the Keesee mechanism operates by depressing a flexible member 33, whereby the "lower ends of the legs 21 are moved inwardly away from the vertical portions 16 to a position to clear the stop members 24 and 26," Col. 2, Lns. 17-22, emphasis added. Movement of the Chou control tube, on the other hand, does not produce any movement of the corresponding "legs" (adjustable rods 20). That is, the Kessee handle has legs which are urged outwardly toward brackets, and a release member which directly moves the legs away from the brackets for angular movement of the legs (see, e.g., Abstract). Chou does not produce any force or cause any displacement to the adjustable rods 20.

The M.P.E.P. makes clear that, "[i]f the proposed . . . combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." M.P.E.P. § 2143.01 citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). It is submitted that, even if the teachings of the Kessee could be combined with those of Chou, such a combination would clearly and necessarily change the manner in which the Kessee handle unit operates.

For at least the above reasons, Applicant submits that *prima facie* obviousness with respect to independent claims 1, 10, 15, 24, and 26 is not established. It is further submitted that dependent claims 3, 7-9, 11, 12, 16, 19-21, and 25 are nonobvious both due to their dependence and also because of the particular subject matter recited therein. Reconsideration and allowance of these claims are requested.

Allowable Subject Matter

Applicant notes that claims 22 and 23 stand allowed, and that claims 4-6 and 18 would be allowable if redrafted in independent form to include recitations from their respective base and intervening claims.

Please enter and consider new claims 27-30, which include subject matter originally recited in now-canceled claims 4-6 and 18, respectively. Entry and allowance of these new claims are respectfully requested.

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It is submitted that the pending claims are in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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5 May 2006

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 5th day of May, 2006, at 2:21 PM (Central Time).

By: Name: Sarah E. Wigan